

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Demetrius Pullins,

Petitioner,

v.

B. Dobbs, Warden,

Respondent.

C/A No. 0:19-3492-JFA-PJG

ORDER

Petitioner Demetrius Pullins (“Petitioner”), proceeding pro se, commenced this action by filing a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1). In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), the case was referred to a Magistrate Judge for review.

The Magistrate Judge assigned to this action¹ prepared a thorough Report and Recommendation (“Report”) and opines that this Court should grant Petitioner’s motion to dismiss and dismiss this action without prejudice. (ECF No. 39). The Report sets forth, in detail, the relevant facts and standards of law on this matter, and this Court incorporates those facts and standards without a recitation.

On February 21, 2020, B. Dobbs, Warden (“Respondent”) filed a motion for summary judgment. (ECF No. 14). On February 24, 2020, the Court issued an Order pursuant to *Roseboro*

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to the Respondent's motion. (ECF No. 15). On April 14, 2020, Petitioner filed a motion for an extension of time to respond which the Court granted. (ECF No. 24).

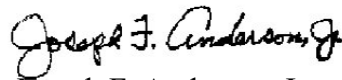
On April 29, 2020, Petitioner filed a letter which was docketed as a response in opposition to Respondent's motion for summary judgment. (ECF No. 33). In the letter, Petitioner requested his motion be dismissed without prejudice. Respondent construed the filing as a motion to dismiss the petition without prejudice and filed a reply indicating Respondent did not oppose it. (ECF No. 36).

On June 2, 2020, the Magistrate Judge filed the Report recommending this Court grant Petitioner's motion to dismiss and dismiss this action without prejudice. Additionally, the Magistrate Judge recommended that Respondent's motion for summary judgment be terminated as moot. On June 15, 2020, Petitioner filed a letter stating he would like to proceed with the case and requested an attorney for assistance on his case. (ECF No. 42). On June 23, 2020, Respondent filed a response to the letter indicating that Respondent objected to Petitioner's request for counsel but does not object to the Court's consideration of the petition and Respondent's motion for summary judgment on the merits. (ECF No. 45).

Based on the foregoing, the Court declines to adopt the Report and Recommendation. (ECF No. 39). Accordingly, this case is referred back to the Magistrate Judge for further pretrial proceedings, including for consideration of Respondent's motion for summary judgment on the merits.

IT IS SO ORDERED.

July 8, 2020
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge